IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1972 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KADMAWALA TEXTILE MILLS P LTD & 1 - Petitioner(s)

Versus

UNION OF INDIA & 3 - Respondent(s)

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Appearance :
MR DHAVAL SHAH for MR PARESH M DAVE for Petitioner(s) : 1 - 2.
MR JITENDRA MALKAN for Respondent(s) : 1-4
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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 07/03/2006

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

RULE. Service of rule is waived by learned Asst. Solicitor General Shri Jitendra Malkan for the

respondents. Looking to the facts of the case and in view of request made by the learned advocates, the petition is finally heard today.

2. The grievance which the petitioner has ventilated in the petition is with regard to coercive recovery effected by the respondent authorities. It is the case of the petitioner that being aggrieved by the order passed by the Commissioner (Appeals), the petitioner has filed an appeal before the CESTAT, which is pending. Alongwith the said appeal, the petitioner has also filed applications for stay. The said applications have not been notified for hearing so far. It is the case of the petitioner that the petitioner is ready and willing to go on with the said applications as and when they are notified for hearing and it has been assured by the learned advocate appearing for the petitioner that the petitioner would not ask for time and shall proceed with the hearing of the applications as and when the applications are fixed for hearing.

3. It has been prayed in the petition that coercive recovery should not be effected till the aforestated applications are not finally disposed of by CESTAT.

4. Learned Asst. Solicitor General Shri Malkan has submitted that as the said applications have not been granted, it is open to the respondent authorities to recover the amount and, therefore, the petitioner is not entitled to any relief from this court.

5. We have heard the learned advocates and have also gone through the judgments relied upon by the petitioner, copies whereof have been annexed to the petition. We have also considered the merits of the case.

6. Looking to the facts of the case, in our opinion, the question is only with regard to recovery of interest and penalty. There are judgments to the effect that if the stay applications have not been decided, the government authorities should not effect recovery by using coercive methods. One such judgment has been annexed to the petition as Annexure-A, delivered in the case of Advance Paints Pvt. Ltd. v. Union of India, in Special Civil Application No. 264/90 and allied matters by the Division Bench of this court.

7. Looking to the said judgment and more particularly in view of other judgments, which have been referred to

in the said judgment, we are of the view that coercive recovery should not be effected at this stage.

8. Looking to the facts and circumstances of the case, we direct the Tribunal to hear the said applications preferably within two months from the date of receipt of this judgment and as assured by the learned advocate appearing for the petitioner, the petitioner's advocate or representative shall not pray for an adjournment before the Tribunal as and when the said applications for stay are fixed for hearing. Till the said applications are finally disposed of, no coercive recovery method shall be resorted to for recovery of the amount in question.

The petition, therefore, stands disposed of as allowed. Rule is made absolute with no order as to costs. A copy of this judgment be also forwarded to CESTAT as soon as possible.

(Anil R. Dave,J.)

(K.A. Puj, J.)

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